

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GMO GAMECENTER USA, INC., : Case No.: 22-cv-5974

et al., :

Plaintiffs, :

v. :

WHINSTONE US, INC. , : New York, New York

Defendant. : August 22, 2023

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TRANSCRIPT OF STATUS CONFERENCE HEARING  
BEFORE THE HONORABLE KATHARINE H. PARKER  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: HAYNES AND BOONE LLP  
BY: Leslie C. Thorne, Esq.  
30 Rockefeller Plaza  
New York, New York 10012

For Defendant: DEBEVOISE & PLIMPTON LLP  
BY: Maeve L. O'Connor, Esq.  
Brandon R. Fetzer, Esq.  
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1 THE DEPUTY CLERK: Calling case  
2 22-CV-5974; GMO Game Center versus Whinstone US.

3 Beginning with counsel for the  
4 plaintiffs, please state your appearance of the  
5 record.

6 MS. THORNE: Leslie C. Thorne and  
7 Aishlinn Bottini.

8 THE DEPUTY CLERK: And counsel for the  
9 defendant, please state your appearance.

10 MS. O'CONNOR: Good afternoon. Maeve  
11 O'Connor, Elliot Greenfield and Brandon Fetzer for  
12 the defendant. And with Your Honor's permission,  
13 pursuant to the Court's individual practices, it  
14 will be our associate, Brandon Fetzer that will  
15 address the Court today.

16 THE COURT: Okay. Great. So let's see,  
17 where do we start? Discovery. Let me hear from  
18 plaintiffs first about where you are.

19 MS. THORNE: Sure. I think both parties  
20 have collected millions and millions of documents.  
21 We've been coordinating on an ESI protocol and on  
22 search terms, which is a little bit more complicated  
23 in our case given that a lot of the documents are in  
24 Japanese, so we have to engage translators and all  
25 of that to determine Japanese translation. Both

1 sides pulled, I think what we both acknowledge were  
2 too many documents in our first pull. So we've been  
3 going back and forth and trying to sort of pull  
4 things down to search terms that can get a more  
5 manageable pull. And I think we should be pretty  
6 close to that. I expect we'll be able to get that  
7 resolved in the next couple of weeks. We've also  
8 exchanged ESI protocols. We received Whinstone's  
9 comments back to our draft of ESI protocols last  
10 week. I don't think we should have too many  
11 remaining issues with that. So I expect that we  
12 will get those results.

13 THE COURT: Okay. Good. Anything else?  
14 How many depositions are you -- remind me what  
15 you're thinking in terms of depositions?

16 MS. THORNE: There are not going to be  
17 depositions yet. We will probably want to take ten  
18 depositions, including third-party depositions. I'm  
19 not sure what Whinstone is thinking in that regard.  
20 So you probably won't be surprised to hear I think  
21 we will come back to you and ask for a little bit  
22 more time to get discovery. We will discuss that  
23 amongst ourselves.

24 THE COURT: You should probably get any  
25 subpoenas out now because invariably you're going to

1 have to talk with the recipients about scheduling.  
2 And we've got back to school, Jewish holidays,  
3 everything. September is a really busy month. So I  
4 think you should go ahead and issue subpoenas so you  
5 can get that ball rolling.

6 MS. THORNE: Understood.

7 THE COURT: Okay. All right.

8 From defendant's standpoint.

9 MR. FETZER: Good afternoon. Yeah, we  
10 agree. I think right now the big gating issue is  
11 search terms. At this point, we don't know exactly  
12 how many documents we'll be reviewing. We should be  
13 able to work that out in the course of the next few  
14 weeks. Once we do, we'll have a greater insight  
15 into how the rest of the case should play out. I  
16 think I'll just echo that we agree that a limited  
17 extension is likely just given where we are today.

18 THE COURT: And you all have gone to the  
19 actual facility now, right?

20 MR. FETZER: Correct. That's right.

21 THE COURT: Okay. To see the machines.  
22 And I know Judge Cronin made a decision related to  
23 the machines and where they need to be.

24 MR. FETZER: That's right.

25 THE COURT: Okay. Great. Now, is

1 Whinstone planning to file an amended answer?

2 MR. FETZER: Yes.

3 THE COURT: Yes. Okay. And is that  
4 going to have any impact on discovery?

5 MR. FETZER: I assume there will be some  
6 additional document requests associated with the  
7 additional counterclaim, but I don't think it should  
8 have a material impact on scheduling.

9 THE COURT: Okay. I just want the  
10 parties to think about that when you're talking  
11 about any extension of the discovery schedule. And  
12 do the parties think that they're ready to reengage  
13 on settlement or is that just not going to happen at  
14 this point?

15 MS. THORNE: I would say not at this  
16 time. And also your question about an amended  
17 answer, I did want to note, as you know, a month or  
18 so ago, Whinstone terminated the agreement. We  
19 believe that's a wrongful termination, and so we did  
20 want to advise the Court, we will be filing a motion  
21 for leave to add a wrongful termination claim as  
22 well.

23 THE COURT: Okay. So what you should do  
24 is discuss that obviously with your adversary, and  
25 if you can consent to that, build that into the

1 schedule. Because I guess there would have to be  
2 some discovery about the termination of the  
3 agreement.

4 MS. THORNE: I don't think it will  
5 fundamentally change the scope of discovery or  
6 anything like that, but I suppose there will be  
7 some. I just wanted to advise the Court since we  
8 were talking about amending things. And we're happy  
9 to talk about that.

10 THE COURT: Okay.

11 MR. FETZER: That's just the first we've  
12 heard of it. So we'll obviously need to talk with  
13 them and take a look at the pleadings.

14 THE COURT: Right. Okay. So I think we  
15 should schedule then another conference just to make  
16 sure that everything is moving along.

17 Chris, do we have a date, say, in the end  
18 of September, early October?

19 MS. THORNE: Your Honor, I'm going to be  
20 out of the country the last week in September.

21 THE COURT: Okay. So we won't schedule  
22 it then. Maybe October, Chris.

23 THE DEPUTY CLERK: I'm looking. Hold on  
24 one second.

25 THE COURT: Didn't we just have a

1       cancellation?

2               THE DEPUTY CLERK:   You want to do --

3               THE COURT:   What day is that?

4               Yeah, we can do that.   October 4 at noon  
5       for a status conference.   So your ESI protocol  
6       should be done by then.   A third-party subpoena  
7       should be out by then.   The amended answer should be  
8       done by then.   You will maybe have a proposed  
9       amendment by then.

10              MS. THORNE:   Absolutely.

11              THE COURT:   Okay.   And you should also  
12       think about getting the key witnesses's schedule  
13       lined up so you save attorney time and get those  
14       dates in there.   Okay.   Anything else from GMO's  
15       standpoint?

16              MS. THORNE:   No, not today.

17              THE COURT:   Okay.   Anything else from  
18       Whinstone's standpoint?

19              MR. FETZER:   Nothing further for today,  
20       Your Honor.

21              THE COURT:   Okay.   Good.   Nice to see  
22       everybody.   Thanks for coming in.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the  
foregoing transcript of proceedings in the case of  
GMO Gamecenter USA v. Whinstone US, Inc.;  
Docket #22CV5974 was prepared using digital  
transcription software and is a true and accurate  
record of the proceedings.

Signature Adrienne M. Mignano  
ADRIENNE M. MIGNANO, RPR

Date: August 22, 2023